

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
MANHATTAN DIVISION

AM GENERAL LLC,

Plaintiff,

v.

ACTIVISION BLIZZARD, INC.,
ACTIVISION PUBLISHING, INC., and
MAJOR LEAGUE GAMING CORP.,

Defendants.

CASE NO. 1:17-cv-08644-GBD

**REDACTED DECLARATION OF ROBERT KOSTICH
IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

I, Robert Kostich, hereby declare as follows:

1. I am the President of Activision Publishing, Inc. (“Activision”). I have been employed in various management roles at Activision for approximately 15 years. During those 15 years, I have worked on the development, production, and marketing of Activision’s video games, specifically the *Call of Duty* series of video games.

2. I make all of the following statements based on my own personal knowledge or based upon information I have learned in the course of my work at Activision. If called as a witness in this action, I could and would competently testify thereto.

Activision and Its Business

3. Activision is a leading worldwide publisher of interactive entertainment software products (i.e., computer and video games). As a video game publisher, Activision owns, finances, markets, advertises, develops, and distributes a catalog of video game products. Over the past 30 years, Activision has published hundreds of video games for personal computers (PCs) and for more than a dozen game consoles and platforms. Some of the video games published by Activision were developed “in-house” by Activision or its wholly-owned development studios. Other video games published by Activision were developed by third party, independent developers pursuant to development contracts with Activision.

4. Activision is a wholly owned subsidiary of Activision Blizzard, Inc. (“ABI”). ABI, as Activision’s parent company, is not itself a video game publisher or developer. Rather, it is Activision and various affiliated game development studios that engage in the development, marketing and distribution of Activision’s video games. Among the development studios

affiliated with Activision are Infinity Ward, Treyarch, and Sledgehammer Games, which are the studios primarily responsible for developing the *Call of Duty* games at issue in this lawsuit.

5. It takes several years and millions of dollars to create a game like the *Call of Duty* games. The development, publishing, marketing, and sale of a video game, including the *Call of Duty* games, involve a large number of people. Among these are artists, level designers, software coders, sound and audio designers, screenwriters, 3d modelers, music composers, game production managers, game testers, marketing teams, advertising agencies and business professionals such as lawyers and accountants. All of these people work together to create games that are appealing, fun to play, and reflect a unique creative vision that first was conceived by a group of game developers and eventually brought to life in the final product.

The Call of Duty Franchise

6. Among Activision's most popular and successful video game properties is the *Call of Duty* series of video games. The *Call of Duty* games are military action games, in which a player stands in the shoes of a military soldier or special forces operative and fights against a computer-controlled or human-controlled opponent across a variety of computer-generated battlefields. Tens of millions of people around the world have played games in the *Call of Duty* series. The games have received countless accolades and awards, as well as extensive coverage on major news networks, late-night talk shows, mainstream magazines and newspapers, and social media.

7. Activision released its first *Call of Duty* game in 2003, titled *Call of Duty*. The original *Call of Duty* was developed exclusively for PCs by Infinity Ward. In *Call of Duty*, the player assumes the role of British, American, and Russian soldiers during World War II. At the time *Call of Duty* was released, it was considered one of the most realistic and compelling video

game depictions of World War II, and was noted for its realistic portrayal of warfare, cutting-edge graphics, and sophisticated artificial intelligence (both of enemies and squadmates). *Call of Duty* received widespread critical acclaim, including numerous “Game of the Year” awards from gaming publications and the Academy of Interactive Arts & Sciences.

8. In 2005, Activision released *Call of Duty 2* for PC and Xbox 360. *Call of Duty 2* also was developed by Infinity Ward and, like the original, took place during World War II. In *Call of Duty 2*, players again were placed in the shoes of British, Russian, and American soldiers on the front lines in North Africa, Stalingrad, and Normandy. *Call of Duty 2* also was extremely popular and well-received by critics, again earning many “Game of the Year” awards. *Call of Duty 2* was noted for its realistic portrayal of World War II, including its use of realistic weapons, uniforms, vehicles, environments, and sound design.

9. Following the release of *Call of Duty 2*, Activision released yearly installments in the *Call of Duty* franchise. As of today, Activision has released sixteen “core” or “topline” *Call of Duty* titles for video game consoles and PCs. These games take place in different settings and during different time periods. Some take place in the past; some take place in the present day, and some take place in a plausible near or far future. Specifically:

(a) *Call of Duty* (2003), *Call of Duty 2* (2005), *Call of Duty 3* (2006), *Call of Duty: World at War* (2008), and *Call of Duty: WW2* (2017) take place during World War II. Among the settings in these games are France, North Africa, Russia, Japan and other famous World War II locations.

(b) *Call of Duty 4: Modern Warfare* (2007), *Call of Duty: Modern Warfare 2* (2009), *Call of Duty: Modern Warfare 3* (2011), and *Call of Duty: Ghosts* (2013) take place in the present day or in a plausible near future. Activision released a “remastered” edition of *Call*

of Duty 4: Modern Warfare for the current generation of game consoles (i.e., PlayStation 4 and Xbox One) in 2016. The Modern Warfare games take place in modern-day “hot spots” such as the Middle East, Afghanistan, and the former Soviet Union and in recognizable cities such as London, Paris, and New York. *Ghosts* is a stand-alone story that takes place in the near future and focuses on a team of elite freedom fighters.

(c) *Call of Duty: Black Ops* (2010) takes place during the height of the Cold War, primarily during the 1950s, 60s and 70s, in locations such as Vietnam, Cuba, and the Soviet Union. Its focus is on covert CIA operations around the world.

(d) *Call of Duty: Black Ops 2* (2012) takes place primarily in the near future with some scenes from the 1980s taking place in locations such as Afghanistan, Panama and Angola.

(e) *Call of Duty: Advanced Warfare* (2014), *Call of Duty: Black Ops 3* (2015), *Call of Duty: Infinite Warfare* (2016), and *Call of Duty: Black Ops 4* (2018) take place between 30 and 60 (or more) years in the future. The settings are hypothetical futuristic versions of cities such as Lagos, Detroit, and “New Baghdad” or human-inhabited space colonies.

10. Since 2006, all of the core (or “topline”) *Call of Duty* games have been released for PCs and the PlayStation and Xbox game consoles. Some of the games also have been released for Nintendo’s Wii and Wii U systems, and some have been made available for Apple Macintosh computers. Subject to technical limitations for certain platforms, the content of the games is largely the same.

11. *Call of Duty* games have been released both as digital downloads and in physical media such as DVDs and Blu-ray discs. Console versions of the *Call of Duty* games (except for the “remastered” edition of *Call of Duty: Modern Warfare*) generally retailed for \$59.99 upon

their release since 2005. Activision also created and sold various “premium” or “collectors” editions of some *Call of Duty* titles, which included collectible merchandise or in-game bonuses. These collectors’ editions retailed at a premium price point, from \$79.99 and \$149.99. For example, the “Prestige Edition” of *Call of Duty: Modern Warfare 2* included a working pair of night vision goggles and special packaging and retailed for \$149.99.

12. Digital versions of the *Call of Duty* games have been offered for sale in the United States on several different platforms, such as the Steam store, the Xbox Live Marketplace, and the PlayStation Store. The digital PC version of the most recent *Call of Duty* game (*Black Ops 4*) was made available exclusively on the Activision Blizzard-owned “Battle.net” digital store.

13. Physical copies of the *Call of Duty* games have been sold at video game specialty stores such as GameStop, electronics stores such as Best Buy, “big box” retail stores such as Target and Walmart, and online retailers such as Amazon.com. In large department stores, the *Call of Duty* games typically are sold in the video game or electronics section. Physical copies always are sold in shrink-wrapped packaging, so that customers can view only the front and back cover before purchasing. While shopping, customers typically cannot view the interior of the box or any materials included within in the box such as the instruction manual, terms of use, or game credits.

14. In addition to the topline *Call of Duty* games, Activision published a few *Call of Duty* “spin off” games for portable devices (the “Portable Games”). Among these were *Call of Duty: Modern Warfare* and *Call of Duty: Mobilized* for the Nintendo DS (the “DS Games”), and *Call of Duty: Heroes* for iOS and Android smartphones. The DS Games and *Heroes* were not developed by Activision, but by independent game studios (N-Space and Faceroll Games). None

of these games currently is available for sale or download. When the DS Games were available, they were made available for sale on physical media (namely, a small “game card”). When *Heroes* was available, it was available exclusively via digital download from the Apple iTunes Store or Android platforms such as the Google Play Store.

15. Attached hereto as **Exhibits 1 through 6**, are true and correct retail copies of the games *Call of Duty 4: Modern Warfare*, *Call of Duty: Modern Warfare 2*, *Call of Duty: Modern Warfare 3*, *Call of Duty: Black Ops II*, *Call of Duty: Ghosts*, and *Call of Duty: Modern Warfare Remastered*.

16. Attached hereto as **Exhibits 7 and 8** are true and correct retail copies of *Call of Duty: Modern Warfare* (DS) and *Call of Duty: Mobilized* (DS).

Authenticity and Realism in the *Call of Duty* Games

17. Since the very first *Call of Duty*, one of the tenets of the franchise has been provide players with an authentic military combat experience. One of Activision’s goals is for a player to feel like he or she has been dropped into the middle of an actual combat zone and to experience the sights, sounds, and emotions of real soldiers in the heat of battle. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

18. There are several ways that Activision and its developers create fictional worlds that look and feel authentic. Combat often takes place in real-world locations that are identifiable by famous landmarks (*e.g.*, the Eiffel Tower, the New York Stock Exchange, the Christ the Redeemer statue in Rio de Janeiro). Computer-controlled characters speak in their

“native” language. Many of the military units in which players participate are real-life military organizations, such as the Army Rangers, British SAS, or Russian Spetsnaz. Uniforms and gear reflect what a soldier would actually wear or carry. The *Call of Duty* games also include dozens of military weapons and vehicles that look, sound, and function in a manner that reflects their real-world counterparts.

19. Just as in the real world, military vehicles and equipment are part of the virtual world depicted by Activision in the *Call of Duty* Games. The *Call of Duty* games depict hundreds of real-life military vehicles, including airplanes, helicopters, ships, tanks, cars, and troop transport vehicles. Vehicles present in the *Call of Duty* games are representative of those that a real-life soldier would expect to see in the time and place depicted. Among the realistic military vehicles depicted in the games at issue are (a) armored vehicles such as the M2A2 Bradley, the M104 Wolverine, the BMP-2, the Stryker, the Opel Blitz, the UAZ-3151, the BTR-80, the BM-21, the 2S19 Msta, (b) helicopters such as the Mi-24 Hind, the Mi-28, the MH-6 Little Bird, the CH-46 Sea Knight, the AH-1 Cobra, the UH-60 Blackhawk, the AH-64 Apache; (c) aircraft such as the MiG-29, the A-10 Thunderbolt II, the F-15 Eagle, the AV-8B Harrier; the AC-130, the C-130 Hercules; the An-124, the B-52 Stratofortress; (d) ships or watercraft such as the USS Dallas, and (e) tanks such as the M1A2 Abrams, the T-72, the T-90, the X08 Selva Tigre, and the Leopard 2.

The Console Games

20. I understand that this lawsuit concerns five PC/Console *Call of Duty* games released between 2007 and 2014: *Call of Duty 4: Modern Warfare* (original and remastered); *Call of Duty: Modern Warfare 2*; *Call of Duty: Modern Warfare 3*; *Call of Duty: Black Ops II*; and *Call of Duty: Ghosts*. All of these games take place in the recent past, present day, or

hypothetical near future. For ease of reference, I will refer to these five games (plus the “remastered” edition of *Modern Warfare*) as the “Console Games.” (I will later discuss the DS Games and *Heroes*, as these are different types of games and Activision did not develop these games.)

21. Physical retail copies of the Console Games were sold to the public in shrink-wrapped DVD-style boxes. Attached, collectively, hereto as **Exhibit 10** are images of the front and back covers of the games mentioned above. These images represent exactly what the consumer would see in a retail store when purchasing one of these games. Consumers would not be able to see inside the box without breaking the shrink-wrap or cutting the seal on the box.

22. The Console Games are military-themed action games. Each of the Console Games is played from the “first person” perspective of a soldier or special forces operative in the midst of combat against an aggressive and hostile enemy force. The Console Games are designed for serious, mature gamers seeking intense, cinematic experiences and/or highly competitive, fast-paced multiplayer shootouts. Each of the Console Games is rated “M” for “Mature” by the Entertainment Software Ratings Board (“ESRB”) and includes mature content such as blood, profanity, and intense or disturbing situations. The Console Games are not intended for children under the age of 17.

23. Each of the Console Games features both a single-player campaign and competitive multi-player mode. Additionally, some of the Console Games also feature “special” gameplay modes such as “Zombies” and “Extinction.” I will briefly describe these modes below. However, because each of the Console Games is different, and each player experiences the Console Games differently, the only way to truly understand the Games’ content is to actually play them. I understand that the Court is being provided with an Xbox One and with

Xbox versions of each of the Console Games. If necessary, Activision is prepared to make a representative of the company available to assist the Court or demonstrate the gameplay of the Console Games.

The Single-Player Campaigns

24. Each of the Console Games contains a story-driven, cinematic “campaign.” These campaigns take between seven to ten hours to complete, though this may vary depending on the skill of the player or the amount of time the player spends exploring the environment.

25. The campaigns for the Console Games are akin to blockbuster Hollywood movies. The campaigns contain detailed storylines, distinct characters that are fully voiced and animated, original musical scores, thousands of lines of dialog, and memorable and elaborate set pieces.

26. The Console Games’ campaigns are divided into a series of chapters or “levels.” Each level (like a chapter of a book) tells a small part of the overall story. Levels are grouped into “Acts,” akin to “acts” in a stage play or “books” within an epic novel. A player typically must complete a number of sequential objectives to finish the level and move on to the next level. Campaign levels vary in size and difficulty, and will take a player between 15 minutes to 45 minutes (or longer) to complete, depending upon the length and complexity of the level, the player’s skill, and whether the player is focused on completing the level or taking time to explore the locations and find items or “secrets” hidden by the developers.

27. Each of the Console Games’ campaigns consist of between 11 and 21 levels, divided into three or four Acts. Specifically, *Call of Duty: Modern Warfare* has 21 levels; *Modern Warfare 2* has 19 levels; *Modern Warfare 3* has 16 levels; *Black Ops 2* has 11 levels; and *Ghosts* has 18 levels.

28. The first time a player plays through the campaign, each level generally must be played in order. However, once a player finishes a particular level, he or she may replay it individually by accessing it via a menu screen.

29. During the course of a campaign, the player will participate in a variety of different experiences, in a variety of different locations. Some examples include infiltrating a television station in the Middle East, sneaking through the Chernobyl exclusion zone in a ghillie suit, being chased through the mountains of Kazakhstan on a snowmobile, protecting the Russian President from hijackers on an airplane, infiltrating a Russian submarine, fighting an occupying force that has taken over the New York Stock Exchange, and maneuvering through a high-speed freeway chase in Los Angeles. Each campaign is a thrilling adventure, with tense moments, plot twists, and some quieter moments or character dialog in between the action sequences.

30. The campaigns in the Console Games center around infantry combat, and the vast majority of the time the player is “boots to the ground,” using guns and other weapons to defeat computer-controlled enemies. In some of the campaigns in the Console Games, there are moments where the player may ride in a helicopter or truck. However, the Console Games are not driving or vehicle combat games.

Multiplayer Maps

31. Each of the Console Games shipped with a robust competitive multiplayer mode (or, in some games, a number of modes). In the multiplayer mode, players compete against each other (or cooperate with each other) in individual or team-based combat on a variety of simulated virtual battlefields.

32. Multiplayer battlefields (known as “maps”) give players the feeling of being in the middle of a real-life combat zone. Maps in the Console Games generally include battle-torn

cityscapes, high-tech indoor environments, train and subway stations, jungles, cargo ships, satellite installations, African villages, and remote mountainside complexes. Maps vary in size, but generally feature a variety of buildings, vehicles, obstacles, hiding places, streets, and/or passageways. Each of these features is tailored to the topography of the map and its fictional location so that the map looks and feels like a real place.

33. In the Console Games, multiplayer combat takes place on foot. Many vehicles are present in multiplayer maps, such as trucks, cars, vans, and various military vehicles. These vehicles are stationary and cannot be driven or manipulated. Players can hide behind vehicles and may be able to climb on or over them, but they generally cannot go inside them or move them. In some of the Console Games, if a vehicle sustains too much damage it will explode. This prevents players from “camping” or hiding from enemies in one spot.

34. Each of the Console Games shipped with more than a dozen maps. Each game in the *Modern Warfare* trilogy included 16 different maps. *Black Ops 2* shipped with 12 maps. *Ghosts* shipped with 13 maps. Each map has a distinct name and theme.

35. After each *Call of Duty* game was released, Activision made additional maps for that game available for purchase via digital download (also known as “DLC” or “downloadable content”). DLC maps were sold in “map packs” that contained a group of new maps. For example, the *Call of Duty: MW2* “Resurgence Pack” consisted of five maps and sold for \$14.99. DLC map packs are “add ons” to the base game and cannot be used or played without having first purchased the base game.

Other Maps and Modes

36. In addition to the campaign and multiplayer modes, *Black Ops 2* and *Ghosts* include a cooperative multiplayer mode. *Black Ops 2* includes a “Zombies” mode, where players

can team up to fight waves of zombies. *Ghosts* includes an “Extinction” mode, where players team up to fight aliens called “Cryptids.” Additional maps and episodes for Zombies and Extinction were available for sale as downloadable content. None of the Zombies or Extinction maps include Humvees.

Marketing and Promotion for the Console Games

37. Activision spent tens of millions of dollars advertising and promoting each of the Console Games. It did so primarily in the following ways:

38. Activision created billboards, Internet banner ads, website “skins,” in-store posters, and in-store displays for the Console Games. Attached hereto as **Exhibit 11** are a few images that reflect representative examples of some in-store marketing materials and displays for certain of the Console Games. Attached hereto as **Exhibit 12** are representative examples of large-scale billboards for *Black Ops II*, and *Ghosts*. No billboard, banner ad, website skin, in-store poster or in-store display for any of Console Games included a depiction of or reference to the Humvee. Rather, these marketing materials uniformly feature the same art (or similar art) as the cover of the game. These marketing materials also prominently display the words “Call of Duty,” “Activision,” and either “Infinity Ward” or “Treyarch.”

39. Activision also created, or worked with advertising agencies to create, a variety of commercials, previews, demonstration videos and gameplay trailers. Attached, collectively, hereto as **Exhibit 13** are digital movie files containing the major trailers for each of the Console Games. Attached hereto as **Exhibit 14** are exemplars of digital movie files containing a small number of promotional Internet gameplay videos for each of the Console Games. These videos are being submitted to the Court on a USB flash drive.

Activision's Licensing Program

40. Activision has a small department that is responsible for licensing its video game brands, including (but not limited to) *Call of Duty*, for a variety of merchandise and consumer products, such as clothing, keychains, toys, computer peripherals, books, posters, and game consoles. Activision's licensing department identifies and evaluates potential licensees, negotiates deal terms, monitors and tracks royalties, and reviews and approves licensed products.

41. One of Activision's licenses is to BradyGames (and its predecessors and successors) for the creation and publication of video game strategy guidebooks. BradyGames has produced strategy guides for dozens of Activision products, including all of the Console Games. A true and correct physical copy of the BradyGames Strategy Guide for *Modern Warfare 2*, *Modern Warfare 3*, *Black Ops II*, and *Ghosts* is being submitted to the Court as **Exhibits 15 through 18.**

42. Another of Activision's licenses is to MEGA Brands, Inc. ("Mega") (later acquired by Mattel, Inc.) for the creation of *Call of Duty*-branded construction sets. A true and correct copy of the October 1, 2012 license agreement is attached hereto as **Exhibit 19 (under seal)** (the "Mega license"). [REDACTED]

[REDACTED]

Certain terms of the Megalicense were clarified in a letter agreement dated April 24, 2013. A true and correct copy of the April 24, 2013 letter agreement is attached hereto as **Exhibit 20 (under seal).**

43. Activision did not create, design, manufacture, or distribute the construction sets that were made pursuant to the Mega Bloks license. All of the marketing and advertising for the Construction Sets was paid for and created by Mega. [REDACTED]

The DS Games

44. The Nintendo DS (dual screen) was a portable handheld game console that was popular in the mid-2000s. The Nintendo DS was a relatively limited console, with a small amount of memory and two tiny three-inch screens.

45. Activision contracted with N-Space, a third-party game developer that specialized in games for the Nintendo DS, for the creation of DS spin-offs of the *Modern Warfare* games, including the DS Games (*Modern Warfare* and *Mobilized*). The DS Games attempt to re-create some of the core *Call of Duty* gameplay, subject to the inherent limitations of the Nintendo DS. The DS Games were only sold in the form of physical game cartridges for the Nintendo DS. A true and correct image of the front and back packaging for the DS Games is attached hereto as **Exhibit 21**. Activision no longer makes or sells the DS Games.

46. Advertising for the DS Games was very limited. Short trailers were created and released on YouTube and other video game websites, a true and correct copy of which is attached hereto as **Exhibit 22**. As best I have been able to determine, the games were never advertised on television and there were no billboards or in-store displays for the games.

Call of Duty: Heroes

47. *Call of Duty: Heroes* was a strategy game available for iPhone (iOS), Android, and Windows devices. The gameplay of *Heroes* involves building and upgrading a personal military base, viewed from a top-down perspective, through the accumulation of a number of resource currencies. These resources are acquired by constructing specific buildings in the player's base. Meanwhile, players may attack enemy bases and must defend their bases from

being attacked both by human and AI controlled enemies. The gameplay of *Heroes* is significantly different than the *Call of Duty* games released on consoles, PC, and handhelds.

48. I understand that AM General has included in its Complaint a link to a YouTube video of *Heroes* located at <https://www.youtube.com/watch?v=g-WR20nNfu0>. I have reviewed this video and can confirm that it is an accurate representation of portions of the actual game.

49. *Heroes* was developed by a third-party developer, Faceroll Games, and was released in 2014. *Heroes* was sold exclusively via digital download from digital platforms such as the Apple App Store, Google Play, and the Amazon App Store. The game pages at these sites featured *Heroes* unique key art. Attached hereto as **Exhibit 23** is a true and correct image of representative art used in connection with the sale of *Heroes*. *Heroes* no longer is available for sale or download.

50. Advertising for *Heroes* was limited. Several short gameplay trailers were created and released on YouTube and other video game websites at various times. As best we have been able to determine, Activision did not advertise *Heroes* on television and did not create any billboards or in-store displays for the game.

Activision and AM General

51. In the 15 years that I have worked at Activision, I have participated in thousands of hours of discussions (email, telephonic and in-person) concerning *Call of Duty* games, including discussions regarding the marketing and promotion of those games. I cannot recall a single instance in which anyone at Activision articulated any intent or desire to confuse or mislead its customers into believing that AM General made, sponsored, endorsed or otherwise was affiliated or involved with any *Call of Duty* game or related product. That has never been Activision's intention.

52. There is no reason why Activision would wish to confuse consumers about AM General's sponsorship, affiliation, or approval with its games. To the contrary, the *Call of Duty* brand is an extremely strong brand. Activision takes care to ensure that customers know that Activision and its developers are the source of *Call of Duty* games. Activision branding is particularly important in the field of military shooter games, as there are many other military game franchises that compete with Activision's *Call of Duty* games.

53. In the rare case that Activision enters into a co-branding deal with the maker of a consumer product, that partnership is announced via press release and made clear through co-branded advertising. For example, Activision entered into a co-branding deal with Chrysler/Jeep in connection with the game *Modern Warfare 3*. Attached hereto as **Exhibit 24** is a true and correct copy of a co-branded advertisement reflecting that relationship. Activision has never stated to anyone that it has a relationship with AM General or that AM General sponsored, endorsed, or approved any *Call of Duty* game.

54. I understand that AM General has claimed that Humvees were present at a "midnight release party" for *Modern Warfare 2* in Los Angeles. A "midnight release party" is an event organized, promoted, and paid for by retail stores such as Best Buy or GameStop, in which the retailer sells copies of a highly anticipated video game at midnight on its release date. Activision has conducted an investigation and has been unable to find any tangible evidence that a Humvee was present at the Los Angeles release party or, if a Humvee was present, that Activision had anything to do with it being present.

55. Activision has searched for evidence that any of its consumers were confused as to whether AM General sponsored, endorsed, or approved any *Call of Duty* game. Activision has been unable to find a single instance in which any customer of any *Call of Duty* game or

related product expressed that he or she was misled into believing that the manufacturer of Humvees was involved with or sponsored the Console Games, or that he or she purchased the game based on that mistaken belief or assumption.

56. Activision has never produced, and has no intention of producing, actual working military vehicles for the U.S. government or for any governmental or military purchaser.

Major League Gaming Corp.

57. In 2016, Activision acquired the assets of Major League Gaming Corp. (“MLG”). MLG was a company that organized and ran competitive video game (“e-sports”) events and tournaments, including both online tournaments and “live” competitive events. For online tournaments, players or teams pay a fee to enter the tournament and then are matched with other teams to progress through a tournament ladder. At the live events, spectators could purchase an event pass to watch teams compete in various multiplayer games.

58. MLG’s tournaments have not been limited to *Call of Duty*. To the contrary, MLG offered tournaments for video games other than *Call of Duty*, including *Halo*, *Gears of War*, *Mortal Kombat*, *Starcraft*, and many others.

59. MLG had no involvement in the development, creation, or distribution of any of the *Call of Duty* games, including the games at issue in this lawsuit. MLG’s *Call of Duty* tournaments took place only after those games were released to the public. (This necessarily was the case, because tournament participants generally could not play the games until they were released to the public). Likewise, prior to 2016 Activision did not manage or control any MLG

Call of Duty tournaments, including any broadcasts of any of these events.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on this 29th day of May 2019 at Santa Monica, California.


Robert Kostich